

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 19940
[Redacted],)	
)	DECISION
Petitioner.)	
)	
)	
)	

On November 17, 2006, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination to [Redacted] (taxpayer) proposing sales and use tax, and interest for the period of May 1, 2006, through August 31, 2006, in the total amount of \$2,242.

On January 11, 2007, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not respond to the hearing rights letters sent by the Commission.

The taxpayer charges people to use its [Redacted]. The taxpayer did not collect sales tax on fees charged to use the [Redacted] as required by Idaho Code § 63-3612. The taxpayer purchased the [Redacted] from a [Redacted] company that had gone out of business. The seller did not charge sales tax, and the taxpayer did not pay use tax on the purchase of the [Redacted], as required by Idaho Code § 63-3621.

The owner of [Redacted], [Redacted], did not object to the imposition of sales tax on the admission charges. He did object to the imposition of use tax on the purchase of the [Redacted]. In his protest letter, he stated that the purchase of the [Redacted] qualified for the “bulk sale” exemption provided by Idaho Code § 63-3622K.

Idaho Code § 63-3622K exempts isolated sales by people who do not hold seller’s permits. The sale by the previous owner is not such an isolated sale, since the owner held a

[Redacted] seller's permit at the time of sale. In addition, Idaho Code § 63-3622K(b)(5) exempts:

The sale of substantially all of the operating assets of a business or of a separate division, branch, or identifiable segment to a buyer who continues operation of the business. For the purpose of this subsection, a "separate division, branch, or identifiable segment" shall be deemed to exist if, prior to its sale, the income and expense attributable to such "separate division, branch, or identifiable segment" could be separately ascertained from the books of accounts and records.

The taxpayer has not shown that it has purchased "substantially all of the operating assets" of the [Redacted] business. Since it only purchased a single asset, the purchase does not qualify for the exemption.

A Notice of Deficiency Determination issued by the Idaho State Tax Commission is presumed to be accurate. *Parsons v. Idaho State Tax Comm.*, 110 Idaho 572 (Ct. App. 1986). The burden is on the taxpayer to show that the tax deficiency is erroneous. *Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810 (1984).

WHEREFORE, the Notice of Deficiency Determination dated November 17, 2006, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
\$2,163	\$377	\$2,540

Interest is calculated through April 18, 2008, and will continue to accrue at the rate set forth in Idaho Code § 63-3045(6) until paid.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed.

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
